IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Bail Appl..No. 5729 of 2007(H)

Cr.No.52/07 OF KASARAGOD EXCISE RANGE

: PETITIONER/ACCUSED

HASHIM, CHERKALA, CHERKALA VILLAGE,
KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY INSPECTOR OF
POLICE, KASARAGOD EXCISE RANGE. REP. BY
THE PUBLIC PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5729 of 2007

Dated this the 24th day of September 2007

O R D E R

Application for anticipatory bail. The petitioner is the second accused. The crux of the allegations is that the first accused was apprehended with 300 x 100 ml of Karnataka arrack in packets. The first accused on interrogation furnished information to the investigating officer about the complicity of the petitioner herein. The petitioner/second accused is allegedly the person who used to furnish contraband liquor to the first accused for local sales. The quantity allegedly seized was also obtained from the petitioner herein, it is alleged.

2. The learned counsel for the petitioner submits that the allegations are totally false. Except the alleged confession statement of the first accused, there is no material whatsoever against the petitioner. The petitioner was hospitalised and was not even available on the relevant date to supply any contraband liquor to the first accused. In these circumstances, the petitioner may be granted anticipatory bail, it is prayed.

3. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that at the

moment and with the available inputs, there is absolutely no reason to justify the prayer for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner has to be arrested and interrogated. Further materials have to be collected. It will be inexpedient and unnecessary to permit the petitioner to arm himself with an order of anticipatory bail at this stage.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I find no features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. There is not even an allegation that the powers of arrest are about to be invoked with any malicious or oblique motives. I am satisfied that this petition deserves to be dismissed.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007